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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,746	02/21/2002	Jack Allen Alford JR.	AUS920010887US1	5334

7590 06/30/2005  
Mr. Volel Emile  
P.O. Box 202170  
Austin, TX 78720-2170

EXAMINER

SHAH, NILESH R

ART UNIT	PAPER NUMBER
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2195

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/082,746

Applicant(s)

ALFORD, JACK ALLEN

Examiner

Nilesh Shah

Art Unit

2195

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/2/04; 2/21/02
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 1-52 are presented for examination.

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
3. Claims 1-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A method is not tangibly embodied in a manner so as to be executable. The claimed steps do not define a machine or computer implemented process(see MPEP 2106).

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Fong et al (6,366,945).
6. As per claim 1, Fong teaches a method dynamically re-partitioning partitioned computer system response workloads, each partition of partitioned computer system having plurality of resources, the method comprising the steps of:  
determining whether a workload resource partition exceeds a maximum threshold(col. 4 lines 30-40; col. 4 lines 59-66); and  
automatically allocating a similar resource to determined that the workload exceeds the maximum threshold (col. 4 lines 40-54; col. 5 lines 37-41; col. 7 lines 1-10; col. 7 lines 30-44; col. 8 lines 6-20).
7. As per claim 2, Fong teaches a method wherein the similar resource is a resource that has not been allocated to any partition (col. 7 lines 10-16; col. 7 line 30-60).
8. As per claim 3, Fong teaches a method wherein the similar resource de-allocated from partition after the workload has decreased to a minimum threshold (col. 7 lines 45-55; col. 6 lines 62-67; col. 8 lines 41-50).

9. As per claim 4, Fong teaches a method wherein similar resource one plurality similar resources are allocated to another workload within a particular threshold (col. 5 lines 37-41; col. 7 lines 1-10; col. 7 lines 30-44; col. 8 lines 6-20).
10. As per claim 5, Fong teaches a method wherein the similar resource de-allocated from the partition and re-assigned the other partition after the workload has decreased minimum threshold(col. 6 lines 15-25;col. 4 lines 35-40; col. 4 lines 55-65).
11. As per claim 6, Fong teaches a method dynamically re-partitioning a partitioned computer system in response workloads, each partition the partitioned computer system having plurality of resources, method comprising the steps:  
creating workload profile for each partition, (scheduling scheme) the profile having a workload and a workload time schedule (col. 5 lines 22-41); and  
automatically allocating additional resources partition before the workload occur the workload resources originally assigned to the partition exceed a maximum threshold (col. 4 lines 40-54; col. 5 lines 42-67; col. 7 lines 1-10; col. 7 lines 30-44; col. 8 lines 6-20).
12. As per claim 7, Fong teaches a method wherein one of resources is a processor (col. 3 lines 15-26).
13. As per claim 8, Fong teaches a method wherein another one resources is memory space (col. 3 lines 15-26).

14. As per claim 9, Fong teaches a method wherein a further resources is an 1/0 slot (col. 3 lines 15-26).
15. As per claim 10, Fong teaches a method wherein the additional resources are not assigned to partition (free pool) (col. 7 lines 10-16; col. 7 line 30-60).
16. As per claim 11, Fong teaches a method wherein the additional resources are de-allocated from the partition after the workload has decreased to a minimum threshold (col. 7 lines 45-55; col. 6 lines 62-67; col. 8 lines 41-50).
17. As per claim 12, Fong teaches a method wherein the additional resources are part a plurality similar resources that are allocated one more other partitions having scheduled workload that does exceed particular threshold (col. 5 lines 37-41; col. 7 lines 1-10; col. 7 lines 30-44; col. 8 lines 6-20).
18. As per claim 13, Fong teaches a method wherein the additional resources are de-allocated from the partition and re-assigned to one more partitions after the workload has decreased to a minimum threshold (col. 6 lines 15-25; col. 4 lines 35-40; col. 4 lines 55-65).
19. Claims 14-18, 27-31, 40-44 are rejected based on the same rejections as claims 1-5 above.

20. Claims 19-26, 32-39, 45-52 are rejected based on the same rejections as claims 6-13 above.


***Conclusion***

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nilesh Shah whose telephone number is (571)272-3771. The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng An can be reached on (571)272-3756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nilesh Shah  
Examiner  
Art Unit 2195

  
**LEWIS A. BULLOCK, JR.**  
**PRIMARY EXAMINER**